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Supreme Court, U.S.
FILED
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No. 97-1625

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1998

CALIFORNIA DENTAL ASSOCIATION,
PETITIONER,
v.
FEDERAL TRADE COMMISSION,
RESPONDENT.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED APRIL 3, 1998
CERTIORARI GRANTED SEPTEMBER 29, 1998

45PP

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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)

CALIFORNIA DENTAL)
ASSOCIATION,)
a corporation.)

Docket No. D-9259

DOCKET ENTRIES

<u>CODE</u>	<u>DESCRIPTION</u>	<u>DATE FILED</u>

1901 0001	Pt3 matter opened for adjud <u>Commission Vote:</u> Comm. Steiger Yes Comm. Azcuenaga Yes Comm. Owen Yes Comm. Starek Yes Comm. Yao Yes <u>IRIS Doc. Info.:</u> No. B141832 Title: Administrative complaint issued on July 9, 1993 in the matter of California Dental Association. Abstract: Binder D09259-1-1; 2-12	07/09/93

2802 0009	Ans to complaint file <u>IRIS Doc. Info.:</u> No. B144648 Title: Answer of respondent California Dental Association. Abstract: Binder D09259-1-1; 22-38	09/02/93

<u>CODE</u>	<u>DESCRIPTION</u>	<u>DATE FILED</u>
3210 0236	ID file <u>IRIS Doc. Info.</u> : No. B174689 Title: Administrative Law Judge's Initial Decision in the matter of California Dental Association. Abstract: Binder D09259-1-8; 4058-4158	07/17/95

3950 0257	Comm act re FO/D&O - NSC <u>Commission Vote</u> : Comm. Pitofsky Yes Comm. Azcuenaga No Comm. Steiger Yes Comm. Starek Yes Comm. Varney Yes <u>IRIS Doc. Info.</u> : No. B191356 Title: Final Order and Opinion with Statements by Commissioners Azcuenaga and Starek in the matter of California Dental Association. Abstract: Binder D09259-1-9; 4819-4927	03/25/96

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CALIFORNIA DENTAL ASSOCIATION) No. 96-70409
<i>Petitioner,</i>) FTC Docket No. 9259
v.)
FEDERAL TRADE COMMISSION)
<i>Respondent.</i>)

DOCKET ENTRIES

<u>DATE FILED</u>	<u>DESCRIPTION</u>

5/21/96	FILED PETITION FOR REVIEW; DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL; NOTIFIED RESPONDENT OF FILING. Setting schedule as follows: petitioner's opening brief is due 8/12/96; respondent's brief is due 9/11/96; petitioner's optional reply brief is due 9/25/96. [96-70409] (ogm)

10/22/97	FILED OPINION: AFFIRMED (Terminated on the Merits after Oral Hearing; Enforced; Written, Signed, Published. Herbert Y. CHOY; Cynthia H. HALL, author; Manuel L. Real, dissenting.)

<u>DATE FILED</u>	<u>DESCRIPTION</u>
	FILED AND ENTERED JUDGMENT. [96-70409] 12/15/97 (vt)
12/8/97	Filed original and 49 copies Petitioner California Dental petition for rehearing with suggestion for rehearing en banc. 15 p.pages, served on 12/4/97 PANEL & ALL ACTIVE JUDGES (vt)
1/28/98	Filed order (Herbert Y. CHOY, Cynthia H. HALL, Manuel L. Real.): The petitioner for rehearing is DENIED and the suggestion for rehearing en banc is REJECTED. [96-70409] (vt)

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
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CALIFORNIA DENTAL
ASSOCIATION,
a corporation.

Docket No. D-9259

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 15 U.S.C. § 41 et seq., and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the California Dental Association, a corporation, has violated and is violating the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH ONE: Respondent California Dental Association ("CDA" or "respondent") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. Its principal office and place of business is located at 818 "K" Street Mall (Post Office Box 13749), Sacramento, California 95853.

PARAGRAPH TWO: CDA is a professional association organized in substantial part to represent the interests of its dentist members. CDA has approximately 15,000 dentist members, constituting approximately 75% of

the practicing dentists in California. CDA is engaged in substantial activities that further its members' pecuniary interests. By virtue of its purposes and activities, CDA is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

PARAGRAPH THREE: CDA has 32 local component dental societies. Dentists are required to be members of the CDA component within whose jurisdiction they practice in order to be eligible for membership in CDA. CDA's activities, including those complained of, are directed by its House of Delegates, which is composed of delegates from CDA's component societies. CDA is a constituent society of the American Dental Association ("ADA"). To be eligible for membership in ADA, a dentist practicing in California must be a member of CDA.

PARAGRAPH FOUR: Most CDA members are engaged in the business of providing dental services for a fee. Except to the extent that competition has been restrained as herein alleged, and depending upon their specialties and geographic location, CDA's members have been and are now in competition among themselves and with other dentists.

PARAGRAPH FIVE: The acts and practices of CDA, including the acts and practices alleged herein, have been, or are, in or affecting commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

PARAGRAPH SIX: In selecting a dentist, consumers generally consider factors of price and quality of service, including the dentist's training and experience, modes of treatment, areas of concentration or special interest, and the efficiency and convenience of the dental office. Truthful, nondeceptive advertising enables dentists to inform consumers about the price and quality factors of their

services and about how their practices differ from other dentists, and thereby benefits consumers and promotes competition among dentists. For example, through advertising dentists can inform consumers of the location and nature of their practices and that they offer special discounts, such as for senior citizens. Such advertising can provide an incentive for dentists to offer services and prices desirable to consumers.

PARAGRAPH SEVEN: CDA has restrained competition among dentists in California by acting as a combination of its members, or by conspiring with at least some of its members and its component societies to restrict unreasonably the dissemination of information to consumers. In particular, CDA has combined or conspired to restrict the ability of dentists to engage in a wide variety of forms of advertising without regard to whether the advertising is truthful and nondeceptive, including:

- A. Advertising price information such as discounted fees;
- B. Advertising relating to the quality of dentists' services, including statements that inform consumers that the dentist takes special steps to address consumers' fears about dental treatment; offers treatments not available from other dentists in the area; or has a practice that in some other respects is different from the practices of other dentists in the community; and
- C. Advertising that uses methods that may be particularly effective in conveying information to consumers.

PARAGRAPH EIGHT: CDA has engaged in various acts and practices in furtherance of this combination or conspiracy, including, among other things:

- A. Adopting, publishing, and maintaining rules that require dentists to refrain from a variety of forms of advertising without regard to whether the advertising is truthful and nondeceptive;
- B. Coercing members who violate its advertising rules into ceasing such advertising;
- C. Expelling members who refuse to refrain from engaging in such advertising;
- D. Refusing to grant membership to any dentist who engages in such advertising; and
- E. Attempting to coerce non-members to comply with its rules, by, among other things, denying membership to, or cancelling the membership of, dentists whose non-CDA member employers advertise in a manner not acceptable to CDA.

PARAGRAPH NINE: CDA's acts and practices have harmed consumers by restricting or preventing dentists from truthfully and nondeceptively informing the public of the price, quality and availability of their services and how their practices differ from those of other dentists. Among other things:

- A. CDA restricts certain categories of price advertising without regard to whether such advertising is truthful and nondeceptive. For example,

- 1. CDA prohibits all announcements of across-the-board discount offers, such as "SENIOR CITIZEN DISCOUNT" and \$25-off coupons for new patients.
- 2. CDA prohibits statements relating to low prices, such as "CARE AT REASONABLE PRICES," that can serve to signal a dentist's sensitivity to consumers' concerns about prices.
- B. CDA restricts representations that relate to the quality of dental services without regard to whether the representations are truthful and nondeceptive. For example,
 - 1. CDA bans a wide variety of advertising that it deems to constitute claims of "quality" or "superiority" without regard to whether such advertising is truthful and nondeceptive. CDA also prohibits quality claims through its bans on the use in advertising of adjectives, superlatives and subjective representations.
 - 2. CDA has stopped dentists from using phrases in advertising such as "SPECIAL TREATMENT FOR NERVOUS PATIENTS," and "SPECIAL CARE FOR COWARDS", and thus has restricted claims that can inform the public that the dentist pays particular attention to consumers' fears and anxieties regarding dental procedures, and that the dentist takes

special care to relieve those fears and anxieties.

- C. CDA restricts certain methods of advertising without regard to whether the advertising claims are truthful and nondeceptive. For example,
1. CDA in effect discourages free dental screenings of schoolchildren by preventing dentists who provide such screenings from using their professional forms, which are imprinted with their names and addresses, in reporting the results of the screening.
 2. CDA restricts the ability of dentists to attract patients and convey information to them about the dentists' practices by, for example, prohibiting dentists from hiring an agent to pass out coupons in front of the building in which a dentist practices, and from distributing business cards or other materials promoting the dentist's practice.
 3. CDA prohibits dentists from advertising in any manner other than that which "contributes to the esteem of the public." Such a prohibition restricts dentists from using advertising techniques that may be particularly effective at gaining attention and conveying information to consumers.
 4. CDA bans the advertising of 'guarantees' of dental services without regard to whether the advertisement is truthful and nondeceptive.

PARAGRAPH TEN: In some of its activities that restrict truthful, nondeceptive advertising for dental services, CDA purports to "enforce" state statutes and regulations pertaining to advertising and solicitation. CDA, however, imposes on the market its own restrictive position on advertising regulation in situations where the state's policy is either unclear or is contrary to CDA's position. CDA is not an agent of the State and has not been authorized to interpret or enforce state laws on behalf of the State.

PARAGRAPH ELEVEN: CDA's actions described in Paragraphs SEVEN, EIGHT and NINE have had, or have, the tendency and capacity to restrain competition unreasonably and to injure consumers in the following ways, among others:

- A. Consumers of dental services have been deprived of the benefits of price and quality competition;
- B. Consumers of dental services have been deprived of truthful, nondeceptive information for use in their selection of a dentist;
- C. The costs to consumers of finding dental services at their desired cost and quality have been raised; and
- D. Innovation in the delivery of dental services has been, or likely has been, hindered or restrained.

PARAGRAPH TWELVE: The combination or conspiracy and the acts and practices described in Paragraphs SEVEN, EIGHT, and NINE constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. CDA's combination or conspiracy, or the effects thereof, is continuing and will continue or recur in the absence of the relief herein requested.

NOTICE

Notice is hereby given to the respondent named above that the 13th day of September A.D., 1993, at 10:00 a.m. o'clock is hereby fixed as the time and Federal Trade Commission Offices, Sixth Street and Pennsylvania Avenue, Northwest, Washington, D.C. 20580, as the place when and where a hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the thirtieth (30th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint, or if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint will provide a record basis on which the Administrative Law Judge shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such answer you may, however, reserve the right to appeal the initial decision to the Commission under § 3.52 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaint and shall authorize the Administrative Law Judge, without further notice to you, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in an adjudicative proceeding in this matter that the respondent is in violation of Section 5 of the Federal Trade Commission Act, as alleged in the complaint, the Commission may order such relief as is supported by the record and is necessary and appropriate, including, but not limited to:

1. Ordering respondent California Dental Association ("CDA") to cease and desist from prohibiting, restricting, regulating, impeding, declaring unethical, interfering with, or advising against:
 - (a) truthful, nondeceptive advertising or publishing by any person of the prices, terms or conditions of sale of dentists' services, or of information about dentists' services, facilities or equipment which are offered for sale or made available by dentists or by any organization with which dentists are affiliated; and
 - (b) truthful, nondeceptive solicitation of patients, patronage, or contracts to supply dentists' services by any dentist or by any organization with which dentists are affiliated, through advertising or by any other means;

Provided that, nothing in this Order shall prohibit the respondent from encouraging its members to obey state law or from disciplining any member as a result of that member's reprimand,

discipline, or sentence by any court or any state authority of competent jurisdiction.

2. Ordering respondent to notify its members of the existence and terms of this Order;
3. Ordering respondent to contact dentists who within the last ten years have been expelled from or denied membership in respondent because of advertising practices and invite them to re-apply for membership;
4. Ordering respondent to disaffiliate any of its component societies that engage in conduct that if engaged in by respondent would violate the order;
5. Ordering respondent to file periodic compliance reports with the Commission; and
6. Ordering any other provisions appropriate to remedy the effects of, or prevent the recurrence of, the anticompetitive practices engaged in by respondent.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this 9th day of July, 1993.

By the Commission.

Benjamin I. Berman
Acting Secretary

SEAL

ASSETS

CDA BUILDING

The new headquarters, equipped with state-of-the-art word processors and a laser printer, sophisticated computers and five conference rooms (one with a seating capacity of over 100 persons), is a landmark that represents the tangible presence of organized dentistry in the state.

Purchasing the 60,000 square foot, six-level building has freed CDA from the drawbacks inherent in renting space. And, it has provided the association with a sound financial investment for many years to come.

[PICTURE OMITTED]

The new Sacramento headquarters marks the growth and influence of organized dentistry's voice in the State Capitol.

FOR-PROFIT SUBSIDIARIES

Sharing the facility with CDA are its wholly-owned subsidiaries The Dentists' Company (TDC), The Dentists' Company Insurance Services (TDCIS), The Dentists' Company Data Management (TDCDM) and The Dentists Insurance Company (TDIC).

The TDC was formed to provide a wide range of services to CDA members while contributing needed dollars to association activities. After only one year of operation, this company has already begun to generate significant income and benefits for members.

TDC this year introduced a new office consultation program—Practice Plus—which has received unanimous praise from its clients. This comprehensive service includes

three visits by consultants to the dental practice to analyze doctor-patient communications, the practice's marketability, business office efficiencies, personnel relations and patient satisfaction. The service is available to members only on a first-come, first-served basis.

TDC also launched a new printing services department for members. For the first time, members can purchase business cards, stationery, "superbills," appointment cards, Rx blanks and other office supplies at prices 25-40% less than they would pay elsewhere.

TDCIS this year provided personal and office insurance protection to nearly 30,000 CDA members, their families and staff. Net income for this fiscal year was \$157,000. By fiscal year 1987-88, net income is expected to reach \$750,000.

Another significant growth area is TDCDM's turnkey computer system. TDCDM recently joined forces with a highly respected computer company to provide dentists with a full-service computer system for the office. The system, designed for and by dentists to meet the special demands of the profession, promises to be the industry standard for dentists.

TDIC, the association's other wholly-owned subsidiary, continues to bring stability to a market where none existed. Founded by CDA in 1980, TDIC now protects over 9,500 members from the risks of astronomical awards from the courts and an escalation of malpractice claims.

FINANCIAL EXPENDITURES

Where do our dues go? By far the largest expenditure goes toward the services described in this report. This chart illustrates the total financial expenditure and how it was allocated for fiscal year 1983-84.

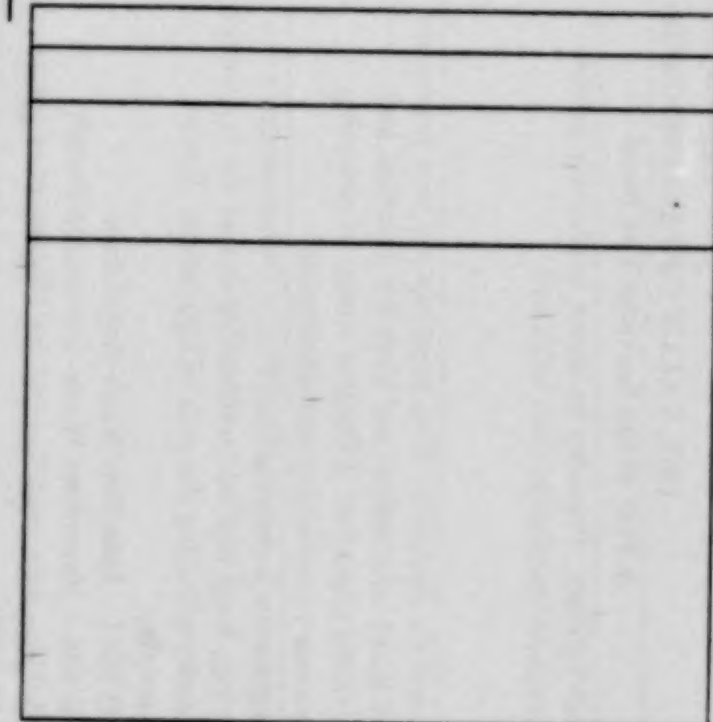
Total Financial Expenditures	\$5,613,026
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Direct Member Services	65%
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Association Administration & Indirect Member Services	20%
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Membership Maintenance	8%
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Services to the Public	7%
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THE VALUE OF MEMBERSHIP: CAN YOU AFFORD NOT TO BELONG?

A Few of the Services You Need	Value to Member
Peer Review: Provides an easier, less costly patient complaint resolution than litigation.	Avoidance of potentially costly, lengthy litigation: Probable Minimum Cost Per Incidence of litigation to either Liability Carrier or Individual Dentist \$10,000
Scientific Sessions: Two meetings per year presenting the latest information and tools for technical and business expertise. Effective means of obtaining necessary continuing education units.	BDF approved CE courses: access to new technology and treatment modalities under one roof \$1,600
Legislative Lobbying/CalDPAC: Demonstrates a strong, large unified membership before the legislature thereby affecting the path of legislation. Recent examples. AB 1641 - Infection Waste Regulation AB 646 - Hazardous Waste Generation Permit SB 934 - Informed Consent for Placement of Silver Amalgam	Ongoing legislative effort resulting in reasonable laws which result in direct benefit to the practicing dentist. Without CDA lobbying efforts, costs to the practitioner would have been \$1,200* \$1,000** (Over a 30-year practice span, combined value = \$66,000)

Public Relations and Marketing IV. Radio and print marketing instills a positive image of CDA dentists in the minds of millions of Californians.	Annual cost for one small phone book ad alone can be \$1,000 - \$3,000 (TV, radio and <i>People</i> magazine are out of reach for the average dentist)
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- * Annual renewal fees and monthly disposal of sharps for ABA 646 and ABA 1641
- ** Application fee for AB 646 - Hazardous Waste Generation Permit DCA-0117980

More...

A Few of the Services You Need	Value to Member
<i>CDA Journal and Update.</i> Publications covering the state-of-the-art in dental technology and the general and legislative news needed by dentists.	Up-to-date scientific information and news about association and legislative activities and programs. Savings to member is..... \$66.00
Professional Placement Service Generates lists of dentists providing or seeking associates, time-sharing, practices for sale and salaried positions.	Increased opportunities to pursue career and practice options. Cost for use of outside agency is usually 1 - 3 month salary base. Assuming \$15,000 average salary savings to member would be \$7,000
CDA's OSHA/SB 198 Compliance: Manual, workshops and provided posters assist members with office compliance requirements. Provided at minimal cost compared to commercial marketplace.	Through compliance, avoidance of costly federal, state and local fines and penalties. For example, a Northern California dentist was recently fined \$40,000
CDA sponsored Insurance Programs (TDC, TDCIS)	Programs constantly evaluated to assure financial stability, quality of product and service offered, and cost containment.

Professional Liability Insurance. Provides claims-made coverage and risk management services (TDIC).	Availability of quality liability coverage at highly competitive rates with dividends paid to policyholders. Lowest rates available to new graduates. Most liberal retirement benefits available. Savings to TDIC insured per year based on territory and risk \$1,005 - \$1,261
Potential value to members who take advantage of services offered:	\$22,739 - \$65,127

For more information regarding the value of membership, please call 1-800-736-8702, extension 4240.

ETHICS
CDA Code of Ethics

Adopted by the California Dental Association House of Delegates June 4-6, 1993

With the adoption of the Principles of Ethics and Code of Professional Conduct of the American Dental Association, it became necessary for the Judicial Council to rewrite CDA's Code of Ethics. In so doing, the council took the opportunity to rearrange the Code into three significant groupings. In the revised version of the Code printed here, the association's most important statements regarding ethical conduct can be found in the beginning sections. Thus, the first group pertains to service to the public; the second discusses the promotion of a dental practice; and the third portion concerns daily ethical conduct in the dental office.

PREAMBLE

The *Code of Ethics* of the California Dental Association consists of the principles stated herein.

The CDA Judicial Council may, from time to time, issue advisory opinions setting forth the council's interpretations of the principles set forth in this *Code*. Such advisory opinions are "advisory" only and are not binding interpretations and do not become a part of this *Code*, but they may be considered as persuasive by the trial body and any disciplinary proceedings under the CDA *Bylaws*.

ETHICS

The association's *Code of Ethics*, although presented in the form of general guides, clearly suggests the conduct which a dentist is expected to follow in carrying out professional activities whether they be related to patients or to fellow practitioners.

Problems involving questions or ethics should be solved within the broad boundaries established in this *Code of Ethics* and within the meaning and interpretation of the *Code of Ethics* and *Bylaws* of the constituent and component societies. If a satisfactory decision cannot be reached, the question should be referred, on appeal, to the Council on Ethics, Bylaws and Judicial Affairs of the American Dental Association, as provided in Chapter XII of the *Bylaws* of the American Dental Association, and also in Chapter XI of the *Bylaws* of the California Dental Association.

Dentists should constantly remind themselves that the ethics of dental practice, the basic system for self-regulation of the dental profession, grow out of the obligations inherent in the practice of a profession. The dentist should reflect constantly upon the professional characteristics of the dental occupation, which are:

1. The provision of a service (usually personal) which is essential to the health and well-being of society.
2. The necessity of intensive education and training to qualify as component to provide the essential service.
3. The need for continuing education and training to maintain and improve professional knowledge and skills.

ETHICS

4. The need for joining with professional colleagues in organized efforts to share new knowledge and new developments of professional practice.

5. Dedication to service rather than to gain or profit from service.

6. Leadership in the community, including all efforts leading to the improvement of the dental health of the public.

SECTION 1. SERVICE TO THE PUBLIC

Service to the public is the primary obligation of the dentist as a professional person.

The dentist's primary obligation of service to the public shall include the delivery of quality care, competently and timely, within the bounds of the clinical circumstances presented by the patient.

In their service to the public, dentists shall conduct themselves in such a manner as to maintain or elevate the esteem of the profession.

In serving the public, a dentist may exercise reasonable discretion in selecting patients for the dental practice. However, a dentist may not refuse to accept a patient into his/her practice or deny dental service to a patient solely because of the patient's race, creed or national origin.

Wherever "standards of care" or "quality services" are undefined by state or federal law, such standards or services shall be defined by the California Dental Association or such agency as designated by the association.

ETHICS

It is unethical for a dentist to render, or cause to be rendered, substandard care.

It is unethical to mislead a patient or misrepresent in any material respect either directly or indirectly the skills, training, identity, services, or fees of the dentist who performs a procedure.

A dentist has the obligation to obtain the fully informed consent of a patient prior to the use of any identifiable artifacts (such as photographs, x-rays, study models, etc.) for any purpose other than treatment.

A dentist who submits any billing for services rendered or to be rendered which is fraudulent, deceitful, or misleading is engaged in unethical conduct.

Advisory Opinion:

1. Dentists shall not represent the care being rendered to their patients or the fees being charged for providing such care in a false or misleading manner.

A dentist who accepts a third party¹ payment under a copayment plan as payment in full without disclosing to the third party payer that the patient's payment portion will not be collected, is engaged in overbilling. The essence of this ethical impropriety is deception and misrepresentation; an overbilling dentist makes it appear to the third party¹ payer that the charge to the patient for the services rendered is higher than it actually is.

SECTION 2. GOVERNMENT OF A PROFESSION

Every profession receives from society the right and obligation to regulate itself, to determine and judge its own

ETHICS

members. Such regulation is achieved largely through the influence of the professional societies, and dentists have the dual obligation of making themselves a part of professional society and of observing its rules of ethics.

Any member convicted of or pleading guilty to any felony or misdemeanor involving malpractice or unprofessional conduct (as defined by the Dental Practice Act or the California Dental Association) is in violation of the *Code of Ethics*, and may be disciplined by the association.

Any member who makes a statement in any document filed with the California Dental Association, its component societies, or the American Dental Association, which statement is fraudulent or false in a material respect, or which omits to disclose any material fact or matter, has engaged in unethical conduct. For the purpose of this section, the word "material" shall mean "not insubstantial" or "of significance" with respect to reasons for which the document is filed.

SECTION 3. COOPERATION WITH DULY CONSTITUTED COMMITTEES

It is the duty of the member to comply with the reasonable requests of a duly constituted committee, council or other body of the component society or of this association necessary or convenient to enable such a body to perform its functions and to abide by the decisions of such body. In the event a member is employed by another dentist, it shall be the duty of the member to provide satisfactory written assurance from the employer that the employed dentist will be able to meet this duty of compliance. Any violation of this duty constitutes unethical conduct.

ETHICS

SECTION 4. COURT ACTION AND ASSOCIATION DISCIPLINE

Dentists who are members of the California Dental Association shall comply with the laws of the State of California relating to the practice of dentistry. Any dentists who shall be reprimanded, disciplined, or sentenced by final action of any court or other authority of competent jurisdiction, pursuant to the laws of the State of California governing the practice of dentistry, or who are found by final action of any court guilty of a crime reflecting unfavorably on dentists or the dental profession, shall thereby render themselves liable to discipline by the association.

SECTION 5. UNPROFESSIONAL CONDUCT AND VIOLATION OF STATE LAW

A member may be disciplined for unprofessional conduct as it is defined by the Dental Practice Act, and for violation of any law of the State of California relating to the practice of dentistry.

SECTION 6. EDUCATION BEYOND THE USUAL LEVEL

The right of dentists to professional status rests in the knowledge, skill and experience with which they serve their patients and society. Every dentist has the obligation to advance his/her knowledge and keep his/her skills freshened by continuing education throughout his/her professional life.

SECTION 7. USE OF PROFESSIONAL TITLES AND DEGREES

A dentist may only use the titles or degrees, Doctor, Dentist, DDS or DMD and any additional academic degrees

ETHICS

earned in health service areas on cards, letterheads, announcements and advertisements. A dentist who has been certified by a national certifying board for one of the specialties approved by the American Dental Association may use the title "diplomate" in connection with that specialty on cards, letterheads and announcements.

If dentists use a title or degree in connection with the promotion of any dental or other commercial endeavor, such usage must not be false or misleading in any material respect.

Advisory Opinion:

1. A dentist using volunteer position titles and association and/or component society connected experience in any commercial endeavor may be making a representation which is false or misleading in a material respect. Such use of volunteer position titles and association and/or component society connected experience may be misleading because of the likelihood that it will suggest that the dentist using such is claiming superior skills. However, when such usage does not conflict with state law, volunteer position titles and association and/or component society connected experience may be indicated in scientific papers and curriculum vitae which are not used for any commercial endeavor. In any review by the council of the use of volunteer position titles and association and/or component society connected experience, the council will apply the standard of whether the use of such is false or misleading in a material respect.

SECTION 8. ANNOUNCEMENT OF SPECIALIZATION AND LIMITATION OF PRACTICE

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This section is designed to help the public make an informed selection between the practitioner who has completed an accredited program beyond the dental degree and a practitioner who has not completed such a program.

The special areas of dental practice approved by the American Dental Association and the designation for ethical specialty announcement and limitation of practice are: dental public health, endodontics, oral pathology, oral and maxillofacial surgery, orthodontics, pediatric dentistry, periodontics and prosthodontics.

A dentist who chooses to announce specialization shall use "specialist in" or "practice limited to" and shall limit the practice exclusively to the announced special area(s) of dental practice, provided at the time of the announcement the dentist has met in each approved specialty for which he/she announces the existing educational requirements and standards set forth by the American Dental Association.

A dentist who uses eligibility to announce as a specialist or a limitation of practice to make the public believe that specialty services rendered in the dental office are being rendered by qualified specialists when such is not the case is engaged in unethical conduct. The burden of responsibility is on the specialist to avoid any inference that general practitioners who are associated with the specialist are qualified to announce themselves as specialists or limitations of practices.

General Standards: The following are included within the standards of the American Dental Association for determining the education, experience and other appropriate

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requirements for announcing specialization and limitation of practice:

1. The special area(s) of dental practice and an appropriate certifying board must be approved by the American Dental Association.
2. The dentists must have successfully completed an educational program accredited by the Commission on Accreditation of Dental and Dental Auxiliary Education Programs, two or more years in length, as specified by the American Dental Association Council on Dental Education or be diplomates of an American Dental Association recognized certifying board.
3. The dentist's practice shall be limited exclusively to the special area(s) of dental practice in which the dentist has announced.

Standards of Multiple Specialty Announcements:

Educational criteria for announcement as a specialist or limitation of practice in an additional recognized area(s) are the successful completion of an educational program accredited by the Commission on Accreditation of Dental and Dental Auxiliary Educational Programs in each area for which the dentist wishes to announce.

Dentists who completed their advanced education in programs listed by the American Dental Association Council on Dental Education prior to the initiation of the accreditation process in 1967, and who are currently ethically announcing as specialists or limitation of practice in a recognized area, may announce in additional areas provided they are educationally qualified or are certified diplomates in each area for which they wish to announce.

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Documentation of successful completion of the educational program(s) must be submitted to the appropriate constituent society. The documentation must assure that the duration of the program(s) is a minimum of two years except for oral and maxillofacial surgery, which must have been a minimum of three years in duration.²

SECTION 9. GENERAL PRACTITIONER ANNOUNCEMENT OF SERVICES

General dentists who wish to announce the services available in their practices are permitted to announce the availability of those services so long as they avoid any communications that express or imply specialization. The dentist shall also state that the services are being provided by a general dentist. No dentist shall announce available services in any way that would be false or misleading in any material respect. The phrase "practice limited to" shall be avoided by general dentists.

SECTION 10. ADVERTISING

Although any dentist may advertise, no dentist shall advertise or solicit patients in any form of communication in a manner that is false or misleading in any material respect. In order to properly serve the public, dentists should represent themselves in a manner that contributes to the esteem of the public. Dentists should not misrepresent their training and competence in any way that would be false or misleading in any material respect.

Advisory Opinions:

1. A member shall not disseminate, permit or cause to be disseminated, or participate in the benefits from

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any form of advertising containing a statement or claim which is false or misleading in any material respect, for the purpose of, directly or indirectly, soliciting patients or inducing the rendering of dental services.

2. A statement or claim is false or misleading in any material respect when it:

- a. Contains a misrepresentation of fact;
- b. Is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts;
- c. Is intended or is likely to create false or unjustified expectations of favorable results and/or costs;
- d. Relates to fees for specific types of services without fully and specifically disclosing all variables and other relevant factors.
- e. Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

3. Any communication or advertisement which refers to the cost of dental services shall be exact, without omissions, and shall make each service clearly identifiable, without the use of such phrases as "as low as," "and up," "lowest prices," or words or phrases of similar import.

4. Any advertisement which refers to the cost of dental services and uses words of comparison or relativity – for example, "low fees" – must be based on verifiable data substantiating the comparison or statement of relativity. The burden shall be on the dentist who advertises in such terms to

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establish the accuracy of the comparison or statement of relativity.

5. Any member who compensates or gives anything of value to a representative of the press, radio, television or other communication medium in anticipation of, or in return for, professional publicity must make known the fact of such compensation in such publicity.

6. A member may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, dentists' list, dental directory listing or a similar professional notice or advice if it includes a statement or claim that is false or misleading in any material respect.

7. A dentist shall not issue or cause to be issued through any medium, a public statement expressing or implying official sanction of the American Dental Association, California Dental Association, or any of its component societies, without due consent of the governing body of said organization. Upon receiving such authorization, the member shall ascertain that any public statement is scientifically correct and complies with the *Code of Ethics*.

8. Advertising claims as to the quality of services are not susceptible to measurement or verification; accordingly, such claims are likely to be false or misleading in any material respect.

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SECTION 11. CARDS, LETTERHEADS AND ANNOUNCEMENTS

A dentist may utilize professional cards, announcement cards, recall notices to patients of record and letterheads when the style and text are not false or misleading in any material respect.²

SECTION 12. OFFICE DOOR LETTERING AND SIGNS

A dentist may utilize office door lettering and signs provided that their style and text are not false or misleading in any material respect.²

SECTION 13. DIRECTORIES

Dentists may permit the listing of their names in a telephone directory, community directory or guide, dental list or dental directory, or in a membership roster, membership directory or other membership list of a service club, charitable organization, fraternity, school alumni association or business, professional or trade association to which they belong, provided such listing is not false or misleading in any material respect.²

SECTION 14. NAME OF PRACTICE

As the name under which a dentist conducts a dental practice may be a factor in the selection process of the patient, use of a trade name or an assumed name that is false or misleading in any material respect is unethical. Use of the name of a dentist no longer actively associated with the practice may be continued for a period not to exceed one year.²

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Advisory Opinion:

1. The use of a trade name or an assumed name could mislead laymen concerning the identity, responsibility and status of those practicing thereunder. Therefore, it is improper to mislead a patient or misrepresent the dentist's skills, training, identity, services, or fees, either directly or indirectly, through the use of a trade name or assumed name. Except as permitted by state or federal law, a dentist shall practice only under his/her own name, the name of a dentist employing him/her who practices in the same office, a partnership name composed only of the name of one or more of the dentists practicing in a partnership in the same office or a corporate name composed only of the name of one or more of the dentists practicing as employees of the corporation in the same office.

SECTION 15. EMERGENCY SERVICE

Dentists shall be obliged to make reasonable arrangements for the emergency care of their patients of record. Reasonable arrangements shall be defined in accordance with the standards established by the component dental society. Failure of the component society to establish such standards shall not excuse the dentist from the duty to provide emergency care to all patients of record.

The dentist shall be obliged when consulted in an emergency by a patient not of record to make reasonable arrangements for emergency care. If emergency treatment is provided, the dentist, upon completion of such treatment, is obliged to return the patient to the dentist of record, unless the patient expressly reveals a different preference.

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SECTION 16. CONSULTATION AND REFERRAL

A dentist shall be obliged to seek consultation, if possible, whenever the welfare of the patient will be safeguarded or advanced by utilizing those who have special skills, knowledge and experience. When a patient visits or is referred to a specialist or consulting dentist for consultation:

1. A dentist has a duty to make reasonable inquiry to determine whether a prospective patient is currently the patient of another dentist.
2. A specialist or consulting dentist upon completion of the care shall return the patient, unless the patient expressly reveals a different preference, to the referring dentist, or if none, to the dentist of record for future care.
3. A specialist shall be obliged when there is no referring dentist and upon completion of the treatment to inform the patient when there is a need for further dental care.

SECTION 17. USE OF AUXILIARY PERSONNEL

Dentists have an obligation to protect the health of their patients by not delegating to a person less qualified any service or operation which requires the professional competence of a dentist. Dentists have the further obligation of prescribing and supervising the work of all auxiliary personnel in the interest of rendering the best service to the patient.

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SECTION 18. THIRD PARTY PRACTICE

A dentist may enter into an agreement with individuals and/or organizations to provide dental health care provided that the agreement does not permit or compel practices which lead to unethical conduct.

In the performance of such contracts the dentist is required to deal fairly with the public and fellow practitioners in the locality.

A dentist who submits any billing for services rendered or to be rendered which is fraudulent, deceitful, or misleading is engaged in unethical conduct.

It is unethical for dentists to contract for services under conditions that make it impossible to render service to their patients in a timely and reasonable manner.

SECTION 19. JUSTIFIABLE CRITICISM

Dentists shall be obliged to report to the appropriate reviewing agency instances of gross and/or continual faulty treatment by another dentist. Patients should be informed of their present oral health status without disparaging comment about prior services.

Advisory Opinions:

1. It is the duty of a dentist to report instances of gross and/or continual faulty treatment. However, this section is entitled "Justifiable Criticism." When informing patients of the status of their oral health, the dentist should exercise care that the comments made are justifiable. This would include finding out from the previous treating dentist under what circumstances and conditions the treatment was

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performed. A difference of opinion as to preferred treatment should not be communicated to the patient in a manner which would imply mistreatment.

2. If comments are made which are obviously not supportable, and, therefore, unjustified, such comments can be the basis for association disciplinary proceedings against the dentist making such statements.

SECTION 20. EXPERT TESTIMONY

Dentists may provide expert testimony when that testimony is essential to a just and fair disposition of a judicial or administrative action.

A dentist has the right to speak out against any policies espoused by organized dentistry, provided the dentist does not misrepresent such policies. It is unethical, however, for dentists to represent their views as those of the dental society or as those of the majority of the dentists of the community when in fact those views are opposed to those of the society or the majority of dentists in the community.

A dentist has the right to make fair comment with respect to dental health subjects, including dentists and the quality of dental care delivered and costs related thereto. However, it is unethical to publish, cause to be published or encourage the publication of comments on such subjects if the dentist does so without having sufficient information which would justify a reasonable dentist to believe the comments to be true. The burden shall be on the commenting dentist to produce the evidence upon which he/she based those comments and to establish therefrom that a reasonable dentist would be justified in believing the

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comments to be true. For the purposes of this section, the word "publication" means any form of communication including, without limitation, the press, radio, television and lecture.

SECTION 21. REBATES, SPLIT FEES AND OTHER FEE ARRANGEMENTS

A dentist may not accept or tender "rebates" or "split fees." Other fee arrangements between dentists or other persons or entities of the healing arts which are not disclosed to the patient are unethical.

SECTION 22. AGENTS AND METHODS

The dentist has an obligation to prescribe, dispense, promote or utilize only those drugs, agents or procedures which, in the dentist's judgment, will favorably contribute to the health of the patient.

Except for limited investigative purposes, the dentist also has the obligation to prescribe, dispense or utilize only those therapeutic agents or procedures which are supported by scientific evidence. The dentist has the further obligation of not holding out as exclusive any agent, method or technique.

SECTION 23. DISCOVERIES, PATENTS AND COPYRIGHTS

Patents and copyrights may be secured by a dentist provided that such patents and copyrights shall not be used to restrict research or practice.

ETHICS**SECTION 24- HEALTH EDUCATION OF THE PUBLIC**

A dentist may participate in a program of health education of the public, involving such media as the press, radio, television, and lecture, provided that such programs are in keeping with the dignity of the profession.

¹ A third party is any party to a dental prepayment contract that may collect premiums, assume financial risks, pay claims, and/or provide administrative services.

² Notwithstanding any ADA *Principles of Ethics and Code of Professional Conduct* or other standards of dentist conduct which may be differently worded, this shall be the sole standard for determining the ethical propriety of such promotional activities. Any provision of an ADA constituent or component society's code of ethics or other standard of dentist conduct relating to dentists' or dental care delivery organizations' advertising, solicitation, or other promotional activities which is worded differently from the above standard shall be deemed to be in conflict with the ADA *Principles of Ethics and Code of Professional Conduct*.